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In The
Supreme Court Of The United States

October Term, 1982

THE CHURCH OF CHRIST OF
COLLINSVILLE, OKLAHOMA,
a non-profit corporation,
ALLEN CASH, TED MOODY, RON WITTEN
and RICHARD FOX,
Petitioners,

v.

THE HONORABLE TONY GRAHAM,
DISTRICT JUDGE OF THE
FOURTEENTH JUDICIAL DISTRICT
OF THE STATE OF OKLAHOMA,
and MARIAN GUINN,
Respondents.

On Writ of Certiorari to the Supreme Court of the State of Oklahoma

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1) Do the First and Fourteenth Amendments prohibit a state court from asserting jurisdiction over a case in which a church member is suing for damages allegedly arising from publication of true facts, relating

to fornication, in a church disciplinary proceeding wherein the church "withdrew fellowship" from the church member?

2) Is it consistent with the First and Fourteenth Amendments for a state court to deny summary judgment to defendants who, in a church disciplinary proceeding wherein the church "withdrew fellowship" from plaintiff church member, published certain true facts relating to fornication by virtue of their free exercise of religion and freedom of speech rights?

3) Do the First and Fourteenth Amendments require that truth be a defense and that truthful statements not be sanctioned in a state court action in which plaintiff church member is suing for damages allegedly arising from the publication of certain true facts, relating to fornication, in a chruch disciplinary proceeding wherein the church "withdrew fellowship" from the church member, and where the statements were made by virtue of defendants' free exercise of religion and freedom of speech rights, and plaintiff does not show a substantial interest in not having said true facts disclosed?

PARTIES TO THE PROCEEDING

The above caption contains the names of all parties.

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REPORTS

None of the opinions delivered in the courts below were reported in either the official or unofficial reports.

JURISDICTIONAL GROUNDS

1) The judgment sought to be reviewed is a denial by the Supreme Court of the State of Oklahoma to assume original jurisdiction, rendered in March 1, 1983, and filed on the same date. This decree thereby let stand an order of the trial court overruling petitioners' Objection to Subject Matter Jursidiction and Motion for Summary Judgment.

2) No rehearings or extensions of time have been sought.

3) 28 U.S.C. § 1257(3) confers on this Court jurisdiction to review the decree in question by writ of certiorari. The order of the Oklahoma Supreme Court is a final judgment as per *Cox Broadcasting Corp. v. Cohn,* 420 U.S. 469, 477-488 (1975).

CONSTITUTIONAL PROVISIONS

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."
>
> U.S. Const., Amend. 1

"All persons born or naturalized in the United States; and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

U.S. Const., Amend. 14 § 1

"Perfect toleration of religious sentiment shall be secured, and no inhabitant of the State shall ever be molested in person or property on account of his or her mode of religious worship; and no religious test shall be required for the exercise of civil or political rights. Polygamous or plural marriages are forever prohibited."

Okla. Const., Art. I § 2

STATEMENT OF THE CASE

The action below was brought by appellee, Marian Guinn, in the District Court of the Fourteenth Judicial District of Oklahoma, on October 26, 1981, wherein said Marian Guinn was plaintiff and your petitioners, The Church of Christ of Collinsville, Oklahoma, Allen Cash, Ted Moody, Ron Witten and Richard Fox were defendants. The claims and allegations of the plaintiff's

petition in said cause are the result of disciplinary action, and circumstances surrounding said action, taken against Marian Guinn because of certain conduct and behavior on the part of said Marian Guinn which was and is against the beliefs of petitioner Church and its members.

Marian Guinn became a member of petitioner Church in March, 1974, and held herself out to the congregation and public as a member of said Church until she wrote a letter on September 24, 1981, attempting to withdraw her membership. That during this period of time she became familiar with and adopted the beliefs of the Church of Christ, including most importantly, the organization of the Church, the authority and responsibility of its elders and members, the use of church discipline, and the belief that adultery and fornication are wrong.

At a church disciplinary proceeding whereby the Church "withdrew fellowship" from plaintiff Guinn, the petitioners published certain true facts about Guinn relating to fornication by way of a letter to Guinn, a letter to other Church members, and the reading of the second letter to Church members in a church service.

Marian Guinn has brought her cause of action alleging that petitioners gave publicity to certain matters concerning her private life, thereby invading her privacy, while at the same time admitting that the statements made by the petitioners that Marian Guinn was a fornicatrix were true.

Plaintiff Guinn claims that the procedures followed and actions taken by petitioners in the "withdrawing of fellowship" from her resulted in an invasion of her privacy, by publication of private facts, and an intentional infliction of emotional distress upon her — yet, plaintiff Guinn has not alleged that the statements made by petitioners were false or that they were made with actual malice and actual evil-mindedness, and that the invasion of privacy was unwarranted.

The defendants filed a demurrer to plaintiff's petition on December 29, 1981, which was overruled. Further, defendants filed an Objection to Subject Matter Jurisdiction and Motion for Summary Judgment which the District Court overruled on October 15, 1982, with exception allowed to the defendants.

Petitioners filed on January 13, 1983, an Application to Assume Original Jurisdiction with the Supreme Court of the State of Oklahoma on a Petition for Writ of Prohibition, basing their application on the

fact that the District Court was assuming to exercise judicial power not granted it by law. That by assuming jurisdiction of said cause of action, the District Court was contravening the First Amendment to the Constitition of the United States, and would be prohibiting the free exercise of petitioners' religious beliefs. Said application was denied on March 1, 1983, thereby affirming the decision of the trial court. It is from this denial that petitioners seek a Writ of Certiorari from the United Stated Supreme Court.

The federal questions involved herein (court jurisdiction over a religious question of church discipline, summary judgment to protect free exercise and freedom of speech rights, and the issue of truth as a defense) were all raised in the trial court in petitioners' Motion for Summary Judgment and Objection to Jurisdiction. They were overruled in the trial court's Order of October 15, 1982. They were raised in the appellate court in petitioners' application to assume original jurisdiction and were overruled by the Oklahoma Supreme Court's Order of March 1, 1983.

ARGUMENT

PROPOSITION I:
THE OKLAHOMA STATE COURTS HAVE DECIDED FEDERAL QUESTIONS IN A WAY IN CONFLICT WITH DECISIONS OF THIS COURT.

By its denial of petitioners' application to assume original jurisdiction, the Oklahoma Supreme Court let stand an order of the trial court in conflict with previous decisions of this Court. The trial court found that it could exercise jurisdiction over what is essentially a religious question involving church discipline, contrary to *Serbian Orthodox Diocese v. Milivojevich,* 426 U.S. 696 (1976). The trial court also denied petitioners' Motion for Summary Judgment which raised petitioners' claims based on the free exercise of religion and freedom of speech, contrary to *Reynolds v. United States,* 98 U.S. 145 (1878); *Cantwell v. Connecticut,* 310 U.S. 296 (1940); *Fowler v. Rhode Island,* 345 U.S. 67 (1953); *Braunfield v. Brown,* 366 U.S. 599 (1961); *Sherbert v. Verner,* 374 U.S. 398 (1968); and *Wisconsin v. Yoder,* 406 U.S. 205 (1972).

Sub-Proposition A:
The Trial Court had no subject matter jurisdiction over the issues involved in Respondent's Petition because a decision

thereon would be on an ecclesiastical question.

The Universal rule that civil courts will not adjudicate religious matters, originated from the Madisonian concern that secular and religious authorities not interfere excessively with one another's respective spheres of choice and influence, lest "both government and religion be corrupted, the political system be strained 'to the breaking point,' and liberty of conscience ultimately compromised." L. Tribe, American Constitutional Law, pp. 864-865 (1978). See also: IX The Writings of James Madison 487 (G. Hunt Ed. 1910). The most serious form of government entanglement with religion is that which embroils government not only in the apparatus of religion but also in its very spirit, where a court decides issues on core matters of belief and ritual. This type of decision making "would lead to the total subversion of . . . religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed." *Watson v. Jones,* 80 U.S. (13 Wall) 679, 729 (1871). Thus, both federal and state courts have no jurisdiction in matters purely religious or ecclesiastical. *Watson v. Garvin,* 54 Mo. 353, 378 (1873).

In the present case, Respondent Guinn is actually "appealing," to the civil courts in order to address what

she views as a wrong. Guinn has contended that the petitioners had no authority to disfellowship her once she "resigned" from the Church. However, it is the petitioners' contention that one may not withdraw from the Church.

This belief is based upon the Bible. Thus, to rule for Guinn in this case would entail a finding that the petitioners' religious practices are "wrong" or "false." As the Court is aware, one of the great First Amendment principles is that "the law knows no heresy, and is committed to the support of no dogma, the establishment of no sect." *Watson v. Jones, supra.* "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or for matters of opinion or for citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us." *West Virginia State Board of Education v. Barnette,* 319 U.S. 624, 642 (1943).

It has constantly been the wish of religious rebels that their views be vindicated in the civil courts. However, this would entail a judge to set himself up as the master of a religious tribunal. James Madison labeled this suggestion that "the civil magistrate is a competent

judge of religious truth" an "arrogant pretension falsified by the contradictory opinion of rulers in all ages, and throughout the world." II The Writings of James Madison 183-191 (G. Hunt ed. 1901). Thus, law in a nontheocratic state cannot measure religious truth. See, P. Kauper, Religion and the Constitution 26 (1964). Even the New Testament provides early precedent for civil deference to religious or ecclesiastical questions. Acts 18:12-16, describes Gallio's refusal, as proconsul of Achaia, to judge a claim that Paul "persuadeth men to worship God contrary to the law." Becuase it was a matter of "words and names, and of your law," Gallio told Paul's accusers, " 'Look ye to it, for I will be no judge of such matters' and he drave them from the judgment seat."

The principles of subject matter jurisdiction on ecclesiastical questions have arisen mainly in the area of church property disputes. However, these cases should not be read narrowly, because in that event plaintiffs would merely change their cause of action to one in tort, and have religious questions decided. In *Watson v. Jones, supra*, this Court held that civil courts should decide disputes over church property in accordance with the terms of any express trust applicable to the property and, when no express trust has been created, should

defer to the decision of the majority in a "congregational" church or of the highest applicable authority in a "hierarchical" church. In *Kedroff v. St. Nicholas Cathedral,* 344 U.S. 94 (1952), the Court reaffirmed *Watson* and implied that it was required by the free exercise and establishment clauses of the First Amendment, and thus binding upon the states as per *Cantwell v. Connecticut,* 310 U.S. 296 (1940), and *Everson v. Board of Education,* 330 U.S. 1 (1947).

> In *Watson v. Jones, supra,* the Court stated that "The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect. . . . *All who unite themselves to such a body (the general church) do so with an implied consent to (its) government, and are bound to submit to it.* But it would be a vain consent and would lead to the total subversion of religious bodies, if anyone aggrieved by one of their decisions could appeal to the secular courts and have them (*sic*) reversed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for." (Emphasis added)

The Court in *Presbyterian Church in the United*

States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440 (1969), stated that the First Amendment forbids civil courts from determining matters at the very core of religion — the interpretation of particular church doctrines and the importance of those doctrines to the religion.

The recent case of *Serbian Orthodox Diocese v. Milivojevich, supra,* should serve as a lodestar to this Court insofar as that case, as the present case, involved a question of church discipline. That case reaffirmed the constitutional prohibition against civil resolution of religious disputes, and severely limited any possible exception for church decisions challenged as arbitrary, inconsistent with church rules, or beyond church jurisdiction. In an early case (*Gonzales v. Roman Catholic Archbishop of Manila,* 280 U.S. 1, 16 (1929)), the Court had stated that "in absence of fraud, collusion, or arbitrariness, the decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive, because the parties in interest made them so by contract or otherwise." In *Serbian Orthodox Diocese,* the Court clarified and severely restricted this "exception." The Court found that the arbitariness exception inherently entailed

inquiry into the procedures that canon or ecclesiastical law supposedly required the church to follow, or else into the substantive criteria by which they were supposedly to decide the ecclesiastical question, exactly the inquiry that the First Amendment prohibits. "It is the essence of religious faith that ecclesiastical decisions are reached and are to be accepted as matters of faith whether or not rational or measurable by objective criteria." 426 U.S. at 714-715. The Court noted that recognition of such an exception would undermine the general rule that religious controversies are not the proper subject of civil court inquiry, and that a civil court must accept the ecclesiastical decisions of church tribunals as it finds them. 426 U.S. at 713.

It is clear that the majority in *Serbian Orthodox Diocese* distinguishes between disputes over church property as such, and religious disputes that only incidentally affect church property or other religious matters. As to the first category, pure property disputes, civil courts may adjudicate them in neutral terms if at all, without resolving underlying religious issues. As to the second category, disputes over religious doctrine, administration, organization, and, of course, discipline, a civil court can discharge its duty only by accepting the decisions of the proper church authority "as it finds them" whatever might be the "incidental effect" on

property or other secular matters. 426 U.S. at 709, 713, 720-723. See also, L. Tribe, *supra,* at 879. Indeed, the Court found that it was beyond any dispute, that "*questions of church discipline* and the composition of the church hierarchy are at the core of ecclesiastical concern," so that it would be unconstitutional for state tribunals to question a church's suspension or expulsion of a member for defying the church's hierarchy and challenging the church's authority through civil litigation. 426 U.S. at 718. See also, L. Tribe, *supra,* at 879-880.

The Oklahoma Supreme Court, in applying the above doctrines and cases, held that where the claimant is proceeding on a suit for damages based upon a decision of a church body, that claimant *must show* that the challenged decision of the church body was not based upon religious philosophy or doctrine. *Oklahoma District Council of the Assemblies of God v. New Hope Assembly of God Church of Norman, Inc.,* 548 P.2d 1029, 1031 (Okla. 1976). Certainly, respondent's claim in the present case fairly admits that any act of the petitioners was based upon religious doctrine.

Thus, the trial court did not have subject matter jurisdiction in which to adjudicate the basis of Guinn's claims, and the Oklahoma Supreme Court erroneously

upheld this decision, contrary to *Serbian Orthodox Diocese, supra.*

Sub-Proposition B:
The Trial Court was constitutionally required in this case to grant Petitioners' Motion For Summary Judgment, based upon qualified privilege, free exercise of religion, and freedom of speech.

Respondent Guinn's answer to the free exercise claims of the petitioners has been to resort to the long line of cases which state that while freedom to believe is absolute, the freedom to act may be regulated, if the regulation is the least restricted means to a compelling end. *Wisconsin v. Yoder,* 406 U.S. 205, 219-220 (1972); *Braunfield v. Brown,* 366 U.S. 599, 603-604 (1961); *Reynolds v. United States,* 98 U.S. 145, 166-167 (1878); *Cantwell v. Connecticut,* 310 U.S. 296, 303-304 (1940). However, the Court must note, that the present case is not one of snake handlers or polygamists, as in *Reynolds, supra,* where actual physical conduct was involved (although it has been held that the use of peyote in religious ceremonies must be granted an exemption from religious prosecution under certain circumstances. *People v. Woody,* 61Cal,2d 716, 40 Cal, Rptr. 69, 394 P.2d 813 (1964)). In the present case, we are concerned merely with the *content* of speech. This is a drastically

different case. As in *Cantwell, supra,* where the mere content of speech is sought to be regulated there must be shown a clear and present danger to a substantial interest of the state. No such clear and present danger has been shown in the present case.

Moreover, in the present case, we are concerned with the contents of a sermon. It is a long-standing and wise rule that it is not within the competence of courts to approve, classify, regulate or in any manner control sermons delivered at religious meetings. *Fowler v. Rhode Island,* 345 U.S. 67 (1953). It would be a dark day for our free society if sermons were regulated, either by virtue of a statute or by virtue of lawsuits brought by religious dissidents or malcontents. Our way of life is based upon the competition of ideas. When one seeks to regulate the mere content of speech, without a requirement of clear and present danger, then one seeks to regulate ideas. This, neither the freedom of speech or free exercise of religion clauses will allow. This Court should recognize the rights of petitioners to freely speak their minds according to their religious dictates and freedom of speech rights. Failure to accommodate religion when the government could substantially achieve its legitimate goals while granting religious exemptions has been disapproved as hostility toward religion rather than

hailed as the essence of neutrality. See, *Sherbert v. Verner,* 374 U.S. 398 (1968); and L. Tribe, American Constitutional Law 852 (1976).

Not only is Guinn's claim for alleged damages sustained by virtue of the content of petitioners' speech, the interest to be protected is petitioners' interest in not having *true* facts about her disclosed. To regulate this kind of "conduct" would be a serious blow to the constitutional underpinnings of the previous cases. This Court in *Cantwell, supra,* wrote as follows:

> "In the realm of religious faith, and in that of political belief, sharp differences arise. In both fields the tenets of one man may seem the rankest error to his neighbor. To persuade others to his own point of view, the pleader, as we know, at times, resorts to exaggeration, to vilification of men who have been, or are, prominent in church and state, and even to false statement. But the people of this nation have ordained in the light of history, that, in spite of the probability of excesses and abuses, these liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democracy.
>
> "The essential characteristic of these liberties is, that under their shield many types of life, character, opinion and belief can develop unmolested and unobstructed." 310 U.S. at page 310.

These ideals are also found in Article I, Section 2 of the Oklahoma Constitution, which reads as follows:

> "Perfect toleration of religious sentiments shall be secured, and no inhabitant of the state shall ever be molested in person or property on account of his or her mode or religious worship . . ."

At any rate, seeking damages for religious expression of true facts coming from a pulpit has no place in our jurisprudence. Thus, the trial court, under the above constitutional principles, should have sustained petitioners' Motion for Summary Judgment.

Furthermore, petitioners have shown a qualified privilege of constitutional dimension. To protect this qualified privilege, and to protect from harassment of exercise of rights of speech and religion, the trial court was required to sustain the petitioners' Motion for Summary Judgment. In the case of *Joiner v. Weeks,* 383 So.2d 101 (La. Ct. App. 1980), where a former minister brought an action against the church's district board, that court held that summary judgment must be given to the church board on the basis of qualified privilege. The *Joiner* Court first realized that to decide the case they must balance the right of the individual to protect his reputation against the right of religious organization to conduct its affaris free of civil court scrutiny or intrusion. The Court decided as follows. "The balance we

strike favors the religious organization since we recognize that a qualified privilege exists which protects the actions of the board and the statements made by the board members . . ." 383 So.2d at page 105. Citing *Serbian Orthodox Diocese, supra,* the Court found the following:

> "Plaintiff's complaint against the defendant board members is, in reality, an attempt by plaintiff to appeal the decision of the board that he is spiritually unfit to continue as a minister of the United Pentecostal Church. The United States Supreme Court has declared it is impermissible, as a violation of the First Amendment of the United States Constitution for civil courts to invesigate the propriety of ecclesiastical proceedings in disciplinary matters."

The Court then extended this rule to the Motion for Summary Judgment at hand. The Court found, as a practical matter of jurisprudence, that it must sustain the summary judgment in order to implement the rule cited in *Serbian Orthodox Diocese.*

> "It would be ludicrous to believe that the constitutional principles held by the United States Supreme Court in (Serbian Orthodox Diocese) could be satisfied by allowing this intrusion into the disciplinary proceedings of an ecclesiastical board. To allow defamation suits to be litigated to the fullest extent

against members of a religious board who are merely discharging the duty which has been entrusted to them by their church could have a potentially chilling effect on the performance of those duties and could very well inhibit the free communication if important ideas and candid opinions." 383 So.2d at page 106.

The Court concluded that if summary judgment may be thought of as a useful tool and an effective screening device for avoiding the unnecessary harassment of defendants by unmeritorious actions which threaten the free exercise of rights of speech and press, then it could also work to protect the free exercise of religion. This Court should do the same.

Thus, the trial court was required by the provisions of the United States and Oklahoma Constitutions to grant the petitioners' Motion for Summary Judgment based upon qualified privilege, and to protect the petitioners' freedom of speech and free exercise of religion, and the Oklahoma Supreme Court erroneously allowed a contrary decision to stand.

PROPOSITION II:
THE OKLAHOMA STATE COURTS HAVE DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW WHICH HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT

The petitioners herein in their Motion for Summary

Judgment, claimed that truth should be a defense in this action. The trial court overruled said Motion, and the Oklahoma Supreme Court let the ruling stand, thereby affirming that truth was not a defense.

In *Cox Broadcasting Corporation v. Cohn,* 420 U.S. 1029 (1975), the Court stated that "[t]he Court has nevertheless carefully left open the question whether the First and Fourteenth Amendments require that truth be recognized as a defense in a defamation action brought by a private person as distinguished from a public official or public figure." Id. at 491. The Court went on to rule that when a newspaper publishes truthful information obtained from records open to public inspection, the State may not impose criminal or civil sanctions. In making this ruling, the Court made it clear that it was not dealing with "the broader question whether truthful publications may ever be subjected to civil or criminal liability consistently with the First and Fourteenth Amendments." Id. Of course, the information published in *Cox Broadcasting Corporation* involved a blameless victim.

The person about whom information was published in *Smith v. Daily Mail Publishing Co.,* 443 U.S. 101 (1979) was a juvenile offender. Like the plaintiff in the case at bar, he had created a situation in which unpleasant statements could truthfully be made about

him. The information about the juvenile was obtained through monitoring the police radio; the name of the offender was not provided by public officials. The State was attempting to sanction the publishing newspaper. The Court held that "[i]f the information is lawfully obtained . . . the state may not punish its publication except when necessary to further an interest more substantial than is present here." Id at 104.

The interest forwarded by the state in *Smith* was the protection of the anonymity of the juvenile offender, the theory being that "confidentiality will further his rehabilitation." Id. The Court found that this interest was outweighed by the need to allow the press freedom to print lawfully obtained truthful information.

In the case at bar, the Court must deal with conflicting constitutional provisions. The friction here is between the petitioners' rights to freedom of speech and free exercise of religion and the respondent's right to be free of invasions into her private life. Unlike the juvenile in *Smith*, she has no inclination to reform. Further, the petitioners intended, through their actions, to help her in her rehabilitation and repentance.

The information published by the petitioners was admittedly true. It was also admittedly lawfully obtained. The petitioners, exercising their rights to

speak freely and to practice the religion of their choice, published these true facts to other members of the Church. Just as the information in *Cox* and in *Smith* was of public interest, the information here involved was of religious interest. In considering the interest claimed by the respondent and the rights of the petitioners, the Court should rule that when a member of a religious group brings an action against the group and its members based on the publication of offensive statements, the First and Fourteenth Admendments require that truth be a defense. The interest claimed by the respondent is not sufficiently substantial to sanction publication.

RESPECTFULLY SUBMITTED,

Charles S. Chapel
COUNSEL OF RECORD

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(918) 587-3161

Counsel for Petitioners

Chris Economou, Donald M. Bingham and Truman Rucker, Jr.

Assisting Counsel for Petitoners

CERTIFICATE OF SERVICE

I, the undersigned, Charles S. Chapel, of lawful age, being first duly sworn, upon my oath state: That 40 copies of the above and foregoing Petition for Certiorari were duly deposited in the United States mail, first class postage prepaid, at Tulsa, Oklahoma, this 31st day of May, 1983, and within the time allowed for filing and pursuant to Rule 28 of the Rules of the Supreme Court properly addressed as follows:

Clerk of the Supreme Court
1 First Street, N.E.
Washington, D.C. 20543

The undersigned further states that three copies of said Petition for Certiorari were duly served on each of the following-named persons by depositing said copies in the United States mail, first class postage prepaid thereon, at Tulsa, Oklahoma, this 31st day of May, 1983, addressed as follows:

Steven R. Hickman
717 South Houston
Tulsa, Oklahoma 74127
Attorney for Marian Guinn

The Honorable Tony Graham
Tulsa County Courthouse
Tulsa, Oklahoma 74103

_____

Charles S. Chapel

STATE OF OKLAHOMA)
) ss.
COUNTY OF TULSA)

Subscribed and sworn to before me this _____ day of May, 1983.

_____
Notary Public

My Commission Expires:

_____

APPENDIX

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FILED
SUPREME COURT
STATE OF OKLAHOMA
MAR 1 1983
Ross N. Lillard, Jr.
CLERK

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

Tuesday, March 1, 1983

MAR 2 1983

THE CLERK IS DIRECTED TO ISSUE THE FOLLOWING ORDERS:

54,103 Barbara Gauthier, a minor under the age of 18 years, who sued by and through Jacqueline Gauthier, her mother and next friend v. W. T. Cackler d/b/a Cherokee Restaurant.
Certiorari denied.
CONCUR: Simms, V.C.J., Irwin, Doolin, Opala, Wilson, JJ.
DISSENT: Barnes, C.J., Hodges, Lavender, JJ.
NOT PARTICIPATING: Hargrave, J.

54,525 Pauline Summey, Bernice Hodges et al. v. Joe Tisdale, Munroe Cochran et al.
Rehearing denied.
CONCUR: Barnes, C.J., Simms, V.C.J., Irwin, Lavender, Doolin, Hargrave, Opala, Wilson, JJ.
NOT VOTING: Hodges, J.

54,919 Wolf and Company, Oklahoma v. State of Oklahoma ex rel. The Oklahoma State Board of Public Accountancy.
Certiorari denied.
CONCUR: Barnes, C.J., Simms, V.C.J., Irwin, Hodges, Lavender, Doolin, Opala, Wilson, JJ.
DISSENT: Hargrave, J.

55,311 Mary Arney Davis v. Thomas Don Davis.
Certiorari denied.
CONCUR: Barnes, C.J., Simms, V.C.J., Hodges, Lavender, Doolin, Hargrave, Wilson, JJ.
NOT VOTING: Irwin, Opala, JJ.

58,237 Earl Goerke v. Lonnie Grove.
Rehearing denied.
CONCUR: Barnes, C.J., Irwin, Doolin, Opala, Wilson, JJ.
DISSENT: Simms, V.C.J., Hodges, Lavender, Hargrave,JJ.

59,598 William E. Greenshields, Co-Executor of the Estate of William Dean Greenshields, Deceased and Individually v. The Honorable Roger Mullins, Associate District Judge of Kay County, Oklahoma.
59,599 William E. Greenshields, Co-Executor of the Estate of William Dean Greenshields, Deceased and Individually v. The Honorable Roger Mullins, Associate District Judge of Kay County, Oklahoma.
Application to assume original jurisdiction in the above two cases granted.
Petition for writ of mandamus to require The Honorable Roger Mullins to disqualify is denied.
CONCUR: Barnes, C.J., Simms, V.C.J., Irwin, Hodges, Lavender, Doolin, Hargrave, Wilson, JJ.
NOT VOTING: Opala, J.

59,623 The Church of Christ of Collinsville, Oklahoma, Allen Cash, Ted Moody, Ron Witten and Richard Fox v. Tony Graham, District Judge of the 14th Judicial District.
Application to assume original jurisdiction denied.

Ralph B. Hodges
ACTING CHIEF JUSTICE

IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA

MARIAN GUINN,	)	
	)	No. CT-81-729
Plaintiff,	)	
	)	
vs.	)	
	)	
THE CHURCH OF CHRIST OF COLLINSVILLE, OKLAHOMA, a non-profit corporation, et al.,	)	
	)	
Defendants.	)	

DISTRICT COURT
FILED
JAN 7 1983
DON E. AUSTIN COURT CLERK
STATE OF OKLA. TULSA, COUNTY

ORDER

NOW, on this 15th day of October, 1982, comes on for hearing the Objection to Subject Matter Jurisdiction and Motion for Summary Judgment of Defendants. The Court, having reviewed the pleadings, depositions, Answers to Interrogatories, Briefs in support of and in opposition to the Motion for Summary Judgment, other documents and records, and after hearing the arguments of counsel, finds that the Court has subject matter jurisdiction and that there are material issues of fact to be determined in this matter.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Objection to Subject Matter Jurisdiction and the Motion for Summary Judgment of the Defendants be and the same is hereby overruled with exception allowed to the Defendants.

WM. W. MEANS

WILLIAM W. MEANS
JUDGE OF THE DISTRICT COURT

APPROVED AS TO FORM:

Steven R. Hickman
Attorney for Plaintiff

Truman B. Rucker, Jr.
Attorney for Defendants

Church of Christ

[illegible] BROADWAY
COLLINSVILLE, OKLAHOMA 74021

MINISTER: BARRY STEPHENS

RES. PHONE 371-5892
OFFICE PHONE 371-4296

ELDERS
ALLEN CASH
TED MOODY
RON WITTEN

DEACONS
DICK HIBBARD
SAM ORR
J.B. STIGALL
DON WITTEN

Sept. 21,1981

Dear Sister Marion;

It is with tremendous concern for your soul and the welfare of the Lords Church that we exhort you to consider the impact of the results of the course you have elected to pursue. We have and will continue to follow the instructions set forth in the scriptures in dealing with matters of church discipline. The Lord set forth the procedure in Matt. 18:15-17, We have confronted you personally as verses 15&16 require, however to date ,you have not responded, so you leave us no alternative but to " tell it to the church" (v-17). If by the close of the worship services Sunday morning Sept. 27,1981, you have not indicated a penetant heart by a public acknowledgement of your sin of fornication, a statement will be read aloud to the congregation, with an exhortation for each to make contact with you for the purpose of encouragement, that you might "hear them" and repent. If you so choose not to heed these exhortations, by the close of the worship services Sunday morning Oct. 4,1981, a statement will be read by the elders ,to exclude you from the fellowship of the Body of Christ, (v-17) and notify sister congregations, which means (1) Not to associate with you, 1Cor. 5:9, (2) Not to eat a meal or open our homes to you,1Cor. 5:11,(3) Not to bid you "God Speed", 2Jn.11,(4) To hold ourselves aloof from you,2Thess.3, and (5) Have no company with you,2Thess. 3:6&14. You must realize that if you allow this to happen, it is clear you have rebelled against Christ and have violated Heb.13:17 "to obey them that have the rule over you" and you cannot enjoy the tie that binds christians together.

Our purpose in exercising this discipline is to "save your soul" 1Cor.5:5 and to "keep the sin from spreading" 1Cor.5:6&7. It is the prayerful desire of the entire body of Christ that you correct this serious matter and avert the "withdrawing of fellowship" of the saints.

For the Church that
Christ died for,
the elders.

Ted Moody
Allen Cash
Ron Witten

PLAINTIFF'S EXHIBIT

[illegible] BEHAVE IN THE HOUSE OF GOD, WHICH IS THE [illegible] OF THE TRUTH

Church of Christ

MINISTER BARRY STEPHENS

RES PHONE 371-5892
OFFICE PHONE 371-4296

ELDERS
DEACONS
DICK HEARD
SAM ORR
J.D. SHOALS
DON WITTEN

October 7, 1981

Dear Brethren,

The following letter was read before the congregation on October 4, 1981.

To the family of God, the Church that meets in this location:

After much time spent in counciling, exhorting, encouraging and prayer, we the elders of the Collinsville Church of Christ, have no alternative but to lead in the "withdrawing of fellowship" from our sister in Christ, Marion Guinn. A statement was read to the congregation last Lord's Day September 27, 1981, in which a plea was made on Marion's behalf, for individuals to contact her for the purpose of encouragement. During this past week several of the members have contacted her both personally and by letter, but has not resulted in a response by her. We find Marion to be in violation of the lollowing scriptures, which will be read by Ron Witten: (Read Eph. 5:1-3; 1Cor. 5:9 : IThess. 4:1-4 : Heb. 10:25-26 and 13:17).

The following scriptures give us instructions relative to dealing with those who are in violation: (Read by Allen Cash, Matt. 18:15017,: IIThess. 3:6 and ICor. 5:11a).

We would encourage you as Marions brothers and sisters in Christ to continue to pray in her behalf and to contact her for the purpose of encouragement and exhortation. The true purpose for the administration of church discipline is stated in I Cor. 5:5 "to deliver such a one unto Satan for the destruction of the flesh, that the spirit may be saved in the day of the Lord Jesus".

Prayerfully Yours in Christ,

The Elders
Collinsville Church of Christ

Elders/pao

No.82-1950

In The
Supreme Court Of The United States

October Term, 1982

THE CHURCH OF CHRIST OF
COLLINSVILLE, OKLAHOMA,
a non-profit corporation,
ALLEN CASH, TED MOODY, RON WITTEN
and RICHARD FOX,
Petitioners,

v.

THE HONORABLE TONY GRAHAM,
DISTRICT JUDGE OF THE
FOURTEENTH JUDICIAL DISTRICT
OF THE STATE OF OKLAHOMA,
and MARIAN GUINN,
Respondents.

On Writ of Certiorari to the Supreme Court of the State of Oklahoma

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Counsel for Respondents

Steven R. Hickman
Assisting Counsel for Respondents

In The
Supreme Court Of The United States

No. 82-1950

October Term, 1982

THE CHURCH OF CHRIST OF
COLLINSVILLE, OKLAHOMA,
a non-profit corporation,
ALLEN CASH, TED MOODY, RON WITTEN
and RICHARD FOX,
Petitioners,

v.

THE HONORABLE TONY GRAHAM,
DISTRICT JUDGE OF THE
FOURTEENTH JUDICIAL DISTRICT
OF THE STATE OF OKLAHOMA,
and MARIAN GUINN,
Respondents.

On Writ of Certiorari to the Supreme Court of the State of Oklahoma

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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SUMMARY OF AGRUMENT

Petitioners come to this Court after a denial by the Supreme Court of Oklahoma of Petitioners' Application to Assume Original Jurisdiction and Petition for Writ of Prohibition.

The denial of Petitioners' Application in the Oklahoma Supreme Court was not a determination on the merits of Petitioners' arguments; nor did it foreclose the re-urging of such arguments on appeal.

The denials of Petitioners' Demurrer, Objection to Subject Matter Jurisdiction and Motion for Summary Judgment are interlocutory orders of the trial court. They may be modified at any time prior to final judgment in the trial court. Only after such final judgment in the trial court are Petitioners entitled to a review of the orders in the Oklahoma Supreme Court. No Oklahoma court has made any final determination of the matters now brought before the Court and this Court has no jurisdiction to grant a Writ of Certiorari.

ARGUMENT

PROPOSITION I:
THE DENIAL OF PETITIONERS' MOTION FOR SUMMARY JUDGMENT AND

DENIAL OF THE TRUTH DEFENSE ARE NOT FINAL ORDERS WHICH CAN BE REVIEWED BY THIS COURT.

Petitioners filed with the District Court of Tulsa County, Oklahoma, an Objection to Subject Matter Jurisdiction and Motion for Summary Judgment which were overruled on October 15, 1982, with exception allowed to the Defendant.

The Petitioners subsequently filed with the Supreme Court of the State of Oklahoma an Application to Assume Original Jurisdiction and a Petition for a Writ of Prohibition. The Application was denied on March 1, 1983.

The Petitioners subsequently filed a Motion to Reconsider Defendants' Demurrer and Objection to Jurisdiction, and Motion for Summary Judgment with the District Court of Tulsa County, Oklahoma, which was overruled on June 2, 1983. (See Appendix.)

Respondents submit that the denial by the trial court of Petitioners' defense of truth and the denial for Motion of Summary Judgment do not constitute "final judgments or decrees rendered by the highest court" of the State of Oklahoma. Nor does the denial of the Supreme Court of Oklahoma, in its discretion, of the Application to Assume Original Jurisdiction constitute such judgment or decree.

In Oklahoma the denial of a Motion for Summary Judgment is an interlocutory order which may not be appealed. *Rowan v. Rowan,* 523 P.2d 1068 (Okl. 1974). Also, the overruling of Demurrer does not constitute a final judgment. See *Rowan, supra.* The ruling that truth is not a defense is in the nature of a "partial summary judgment" which has been held by the Oklahoma Court not to be a "final order." *Reams v. Tulsa Cable Television, Inc.,* 604 P.2d 373 (Okl. 1979).

In each of the three rulings of the District Court of Tulsa County, Oklahoma, mentioned above no determination has been made by the Supreme Court of Oklahoma as to the correctness of such decision. The District Court of Tulsa County, Oklahoma, retains at all times until a final judgment is rendered in the cause the right to reconsider its view and change its decision. See *Beck v. Bacone College,* 604 P.2d 876, 877 (Okl. App. 1980). Indeed, Petitioners relied upon the *Beck* case in moving the trial court to reconsider its earlier rulings. The Court granted the Motion to Reconsider but denied Petitioners Motion on their merits. In other words, not only has the Oklahoma Supreme Court not rendered a final decision on the matters sought to be reviewed in this Court, but the District Court has not rendered a final decision which it itself cannot change.

The case of *Cox Broadcasting Corp. v. Cohn,* 420 U.S. 469 (1975), reaffirms the general rule that this Court has appellate jurisdiction with respect to state litigation only after the highest Court in which judgment can be had has rendered a final judgment or decree. 420 U.S. at 476-477. Although the Court sets out four exceptions to the rule, none of the exceptions applies in the instant action. First, there has been no conclusive determination of a Federal issue in the instant action which determines the outcome of further proceedings. Indeed, there has been no issue conclusively decided in this action at all. The decisions rendered so far can be reversed by the trial court itself. The Supreme Court of Oklahoma has yet to hear the merits of any claim involved in this law suit. Second, no Federal issue has been finally decided by the highest Court of the state which decision will survive the outcome of further State Court proceedings. Third, no Federal claim has been finally decided where review cannot later be had. The denial of the Application to Assume Original Jurisdiction in no way precluded the right of the Petitioners to raise its arguments in the Motion for Summary Judgment and Demurrer as well as its truth defense on appeal. Indeed, the law in Oklahoma on the granting of the Writ of Prohibition is that same will not be granted when an appeal is an adequate remedy. *Short v. Dunn,* 67

P.2d 18 (Okl. 1977); *Watchorn Basin Association v. Oklahoma Gas & Electric,* 525 P.2d 1357 (Okl. 1974). Finally, no Federal issue has been decided in the highest Court of the State of Oklahoma, which, if incorrect, would preclude all further litigation involved herein. The issue at stake is the extent to which Petitioners have the right to invade the privacy of Respondent, Marian Guinn, both before and after she ceased membership in the Church. If this Court were to decide the issues of law differently from the District Court of Tulsa County, Oklahoma, that law would still need to be applied to the facts of the case herein which could only be done in the District Court on the record made there. In summary, none of the exceptions to the finality rule apply in the instant action.

The overruling of Petitioners' Demurrer and the denial of the truth defense are interlocutory orders reviewable by both the District Court of Tulsa County and the Supreme Court of Oklahoma and do not constitute final orders ripe for review in this Court. For these reasons the Petition for a Writ Certiorari should be denied.

PROPOSITION II:
THE DENIAL OF THE APPLICATION TO ASSUME ORIGINAL JURISDICTION AND PETITION FOR WRIT OF PROHIBITION DOES NOT CONSTITUTE A FINAL JUDGMENT OR DECREE OF THE

HIGHEST COURT OF THE STATE OF OKLAHOMA.

When a proceeding is filed before the Supreme Court of Oklahoma on a Application to Assume Jurisdiction and Petition for Writ of Prohibition, the Supreme Court of Oklahoma can react in three ways. The Court can assume original jurisdiction and grant a writ as requested. This entails taking jurisdiction of the matter and hearing the Petition on its merits and coming to a conclusion as to the validity of the Petition for Writ of Prohibition. Second, the Supreme Court could assume original jurisdiction and deny the Writ of Prohibition. Such again would be a determination of the merits of the appeal, determining that the arguments of the Petitioners are without merit. Finally, the Supreme Court can deny the assumption of original jurisdiction. In such a case, the effect is as though no determination had been made by the Supreme Court of Oklahoma. The case remains in the trial court for further proceedings. There is no preclusion of the right to raise the issue in an appeal. The assumption of original jurisdiction is a matter discretionary with the Supreme Court of Oklahoma. *Rey v. Means,* 575 P.2d 116 (Okl. 1978); *Looney v. Election Board of Seminole County,* 293 P. 1056 (1931). The failure of the Supreme Court of Oklahoma to assume jurisdiction in this case does not bar the appeal of the issues decided in the trial court once a

"final order" has been entered in the case pursuant to 12 O.S. §952.

Although prohibition is generally a proper means to seek redress when a trial court exceeds its jurisdiction, that is only granted when an inferior court is "usurping or exercising unauthorized jurisdiction." It does not lie to prevent an inferior court from erroneously exercising jurisdiction, but only to prohibit proceedings in which the lower court is wholly without jurisdiction or threatens to act in excess of its jurisdiction. *Lawhorn v. Robertson,* 266 P.2d 1008 (Okl. Cr. 1954). In the instant case there is a fine line between the rights of the Petitioners and the rights of Respondent Guinn. If the trial court has drawn that line in the wrong place, the question is not one of usurping jurisdiction, but only a mere error of law which should be remedied by appeal and not prohibition. See *Short v. Dunn, supra.*

Petitioners admit that Respondent Guinn had the right to withdraw herself from their society. This makes moot the argument that the matters herein are purely ecclesiastical which may not be reviewed by a Civil Court. The theory behind granting ecclesiastical courts independence in their sphere is that the party to the ecclesiastical court has submitted herself to its jurisdiction by being and remaining a member thereof. However, when that person withdraws from the society

and removes herself from the jurisdiction of that Court, the issue is not purely ecclesiastical. In other words, the jurisdiction does not abide solely in an ecclesiastical court. The jurisdiction becomes one for a civil court. The Oklahoma Supreme Court thus properly denied Petitioners' Application to Assume Original Jurisdiction. Petitioners may re-urge their arguments on appeal.

CONCLUSION

Because there is jurisdiction for the trial court to hear this matter and because the Supreme Court of Oklahoma has rendered no final decision upon the jurisdiction of the trial court or upon the trial court's determination of the rules of law to be applied in this case, this Court lacks jurisdiction to hear same at this stage of the proceedings, and this Court should deny the Petition for Writ of Certiorari.

Respectfully submitted,
FRASIER, FRASIER & GULLEKSON

By: Thomas Dee Frasier

THOMAS DEE FRASIER
717 S. Houston, Suite 400
P. O. Box 799
Tulsa, Oklahoma 74101
(918) 584-4724

CERTIFICATE OF SERVICE

I, the undersigned, Thomas Dee Frasier, of lawful age being first duly sworn, upon my oath state: That 40 copies of the above and foregoing Respondent's Brief in Opposition to Petition for Writ of Certiorari were duly deposited in the United States mail, first class postage prepaid, at Tulsa, Oklahoma, this 30th day of June, 1983, and within the time allowed for filing and pursuant to Rule 28 of the Rules of the Supreme Court properly addressed as follows:

Clerk of the Supreme Court
1 First Street, N.E.
Washington, D.C. 20543

The undersigned further states that three copies of said Respondent's Brief in Opposition to Petition for Writ of Certiorari were duly served on each of the following-named persons by depositing said copies in the United State mail, first class postage prepaid thereon, at Tulsa, Oklahoma, this 30th day of June, 1983, addressed as follows:

Charles S. Chapel
502 West Sixth Street
Tulsa, Oklahoma 74119
Attorney for Petitioners

The Honorable Tony Graham
Tulsa County Courthouse
Tulsa, Oklahoma 74103

Thomas Dee Frasier
THOMAS DEE FRASIER

STATE OF OKLAHOMA)
) ss.
COUNTY OF TULSA)

Subscribed and sworn to before me this 30th day of June, 1983.

Sue Ann Smith
NOTARY PUBLIC

My Commission
Expires

June, 1984

APPENDIX

IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA

MARIAN GUINN Plaintiff, vs. THE CHURCH OF CHRIST OF COLLINSVILLE, OKLAHOMA, a non-profit corporation; ALLEN CASH, TED MOODY, RON WITTEN, and RICHARD FOX, Defendants.	)	No. CT-81-929

DISTRICT COURT
FILED
JUN 15 1983
DORIS AUSTIN, COURT CLERK
STATE OF OKLA. TULSA COUNTY

ORDER

COMES NOW the Court on this Second day of June, 1983, this matter coming on for Hearing on the Defendants' Motion to Reconsider. Plaintiff being present by and through her attorney, Steven R. Hickman, Defendants' being present by and through their attorneys, Truman B. Rucker, Jr. and Donald M. Bingham. The Court having examined the Motions, accompanying Briefs, Pleadings and other documents of record, and after having heard oral arguments does find that the Defendants' Motion to Reconsider is granted, and further, that Defendants' Demurrer, Objection to Jurisdiction, and Motion for Summary Judgment should be overruled and the previous decisions of Judge William Means in this matter affirmed. Exception allowed. Court further finds that the parties shall have until August 15, 1983, to complete discovery in this matter, and that the Plaintiff, Marian Guinn, shall have ten days from this date to amend her Second Cause of Action if she wishes to include any other allegations.

It is therefore ordered, adjudged and decreed that the Defendants' Motion to Reconsider is granted and all underlying Motions overruled and affirmed in accordance with Judge Means previous rulings, that discovery be completed by August 15, 1983, and that the Plaintiff be given ten days to amend her Second Cause of Action.

TONY M. GRAHAM
JUDGE OF THE DISTRICT COURT

APPROVED AS TO FORM:

Steven Hickman
Attorney for the Plaintiff

Truman B. Rucker, Jr.
Attorney for the Defendants

Donald M. Bingham
Attorney for the Defendants